

E-Filed: 2/12/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BYRON ANDERSON,

Plaintiff,

v.

MARYLAND STATE POLICE
HEADQUARTERS and TROOPER FIRST
CLASS HERNDON,

Defendants.

No. C-06-05684 RMW

ORDER OF TRANSFER

[Re Docket Nos. 16, 17]

Plaintiff Byron Anderson, proceeding *pro se*, claims that he was physically and mentally damaged after being slammed into a barbed wire fence by a Maryland State Trooper on September 24, 2005 while he was living in Englewood, Maryland. He has named the Maryland State Police Headquarters and Trooper First Class Tyrone Herndon as defendants. Before the court are two motions, both filed or renoticed on November 6, 2006: 1) a motion to dismiss filed by defendant Maryland State Police Headquarters and 2) a motion for judgment on the pleadings filed by defendant Trooper First Class Tyrone Herndon. As of the date of the January 26, 2007 hearing, plaintiff had not filed an opposition to either defendant's motion.

Both defendants' motions are premised on the lack of personal jurisdiction.¹ A court lacking personal jurisdiction is powerless to adjudicate. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999). The court may obtain personal jurisdiction over a defendant if it finds that either specific or general jurisdiction exists. For either specific or general personal jurisdiction to exist, defendants must have certain minimum contacts with the forum state. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Plaintiff's complaint alleges no facts whatsoever that occur in California, nor does the complaint demonstrate that either of the defendants has contacts with California. Both as pleaded and as argued by the plaintiff at the January 26, 2007 hearing on the defendants' motions, this court lacks jurisdiction to consider plaintiff's claims against the Maryland State Police Headquarters and Trooper Herndon.

This court can, however, transfer this case to an appropriate district. Under 28 U.S.C. § 1406(a), "the district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. §1406(a). The United States Supreme Court, interpreting § 1406(a) stated, "[n]othing in that language indicates that the operation of the section was intended to be limited to actions in which the transferring court has personal jurisdiction over the defendants." *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 465 (1962). The Court concluded that the purpose of the statute was to avoid "the injustice which had often resulted to plaintiffs from dismissal of their actions merely because they had made an erroneous guess with regard to the existence of some elusive fact of the kind upon which venue provisions often turn." *Id.* at 466. Accordingly, it held that § 1406(a) authorizes the transfer of cases, "however wrong the plaintiff may have been in filing his case as to venue, whether the court in which it was filed had personal jurisdiction over the defendants or not." *Id.*

A case in which venue is improper may be transferred, rather than dismissed, if transfer is in the interest of justice. *See District No. 1 Pacific Coast District v. Alaska*, 682 F.2d 797, 799 (9th Cir. 1982). Whether a transfer or a dismissal is in the interest of justice rests within the discretion of the district court. *Naartex Consulting Corp. v. Watt*, 722 F.2d 779, 789 (D.C. Cir. 1983) (citing *Cook v. Fox*, 537


¹ In the alternative, both defendants assert immunity from suit as to plaintiff's claims under the Eleventh Amendment.

1 F.2d 370, 371 (9th Cir. 1976)). There is no indication that plaintiff's choice of court was anything other
2 than an error based on incomplete understanding of the court's jurisdictional requirements. Therefore,
3 in the interest of justice, this court will transfer the case to the District of Maryland, a district in which
4 this case could have originally been brought under the facts pleaded.

5 **II. ORDER**

6 The defendants are located and the actions complained of occurred in Maryland, this case is
7 TRANSFERRED to the United States District Court for the District of Maryland. Because it lacks
8 jurisdiction to proceed, this court will not rule upon defendants' pending motions. The clerk shall
9 terminate all pending motions and transfer the entire file to the District of Maryland.

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12 DATED: 2/6/07



RONALD M. WHYTE
United States District Judge

1 A copy of this order was mailed on 2/12/07 to:

2 **Plaintiff:**

3 Byron Anderson
4 Post Office Box 381
5 Jolon, CA 93928

6 **Counsel for Defendant(s):**

7 Donald Eugene Hoffman
8 Office of the Attorney General
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14 455 Golden Gate Avenue
15 Suite 11000
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18 Counsel are responsible for distributing copies of this order to co-counsel, as necessary.
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